

by the lender in the case of a borrower who entered repayment without the knowledge of the lender;

(5) Includes the period between the filing of the petition for relief and the date on which the proceeding is completed or dismissed, unless payments have been made during that period in amounts sufficient to meet the amount owed under the repayment schedule in effect when the petition was filed.

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(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087)

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§ 682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guaranty agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guaranty agency; or

(2) 1 or more private nonprofit guaranty agencies in a State if, during a fiscal year—

(i) The State does not have a guaranty agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guaranty agency—

(A) Agrees to establish at least 1 office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution and that it does not have any substantial affili-

ation with an eligible educational institution.

(b) A guaranty agency shall apply to the Secretary in order to receive an initial advance.

(c)(1) An advance may be made to a new guaranty agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2)(i) A guaranty agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same day that the initial advance was made for each of the four succeeding calendar years.

(ii) An additional advance may be made to a private nonprofit guaranty agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in a Federal advances for claim payments agreement between the Secretary and the guaranty agency.

(e) In the case of a private nonprofit guaranty agency, the repayment of advances is determined separately for each State for which the agency has received in advance under this section, in accordance with section 422(c)(4) of the Act.

(f) A guaranty agency shall return advances provided under this section in accordance with the provisions of sections 422 (c) and (d) of the Act.

(Authority: 20 U.S.C. 1072, 1082)

§ 682.404 Federal reinsurance agreement.

(a) *General.* (1)(i) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement the Secretary reimburses the guaranty agency for 98 percent of its losses on default claim payments to lenders.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, the Secretary reimburses a guaranty agency for 100 percent of its losses on default claim payments—

(A) For loans made prior to October 1, 1993;

(B) For loans made under an approved lender-of-last-resort program;

(C) For loans transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(D) For a guaranty agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976 for five consecutive fiscal years beginning with the first year of its operation.

(2) For purposes of this section—

(i) *Losses* means the amount of unpaid principal and accrued interest the agency paid on a default claim filed by a lender on a reinsured loan, minus payments made by or on behalf of the borrower after default but before the Secretary reimburses the agency;

(ii) *Preclaims assistance* means collection assistance made available to the lender by the guaranty agency no later than the 90th day of delinquency. This assistance must include collection activities that are at least as forceful as the level of preclaims assistance performed by the guaranty agency as of October 16, 1990, and involves the initiation by the guaranty agency of at least 3 collection activities, one of which is a letter designed to encourage the borrower to begin or resume repayment. As part of their preclaims assistance, guaranty agencies must provide counseling and consumer information (in written or other format) to the borrower by the 10th working day after the agency receives the lender's request for preclaims assistance informing the borrower of all of the borrower's options to avoid default, including the availability of consolidating delinquent loans under the FFEL Program or the Federal Direct Consolidation Loan Program.

(iii) *Supplemental preclaims assistance* means collection assistance provided to the lender by the guaranty agency that involves the initiation by the agency of at least two collection activities designed to encourage the borrower to begin or resume payment that

is begun on or after the 120th day of delinquency.

(3)(i) If an account has been subject to supplemental preclaims assistance and is not submitted as a default claim by the lender to the guaranty agency by the 150th day after the loan becomes 120 days delinquent, the Secretary will pay the guaranty agency \$50.

(ii) If a guaranty agency contracts with an outside entity to perform any supplemental preclaims assistance activity, that entity may not—

(A) Hold or service the loan;

(B) Own, control, or share common ownership with the holder or servicer of the loan; or

(C) Hold a contract with the agency to perform collection services on the loan in the event of default.

(iii) For purposes of paragraph (a)(3)(i) of this section, an "account" includes 1 or more FFEL programs loans that were—

(A) Made to the same borrower;

(B) Held by the same lender;

(C) Guaranteed by the same guaranty agency;

(D) Subject to preclaims assistance by the same agency; and

(E) Covered by the same supplemental preclaims assistance request.

(4) A guaranty agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(5) If a lender has requested preclaims assistance as described in paragraph (a)(2)(ii) of this section upon request of the school, the agency shall notify the school for attendance at which the borrower received the loan of the lender's request by providing the school with a copy of that request, or by other means.

(b) *Reinsurance rate.* (1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 5 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 90 percent of its losses for loans made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program; or

(ii) 88 percent of its losses for loans made on or after October 1, 1993.

(2) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 9 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 80 percent of its losses for loans made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program; or

(ii) 78 percent of its losses for loans made on or after October 1, 1993.

(3) For purposes of this section, the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year does not include amounts paid on claims by the guaranty agency—

(i) On loans considered in default under § 682.412(e);

(ii) Under a policy established by the agency that is consistent with § 682.509(a)(1); or

(iii) That were filed by lenders at the direction of the Secretary;

(iv) On loans made under a guaranty agency's approved lender-of-last-resort program.

(4) For purposes of this section, *amount of loans in repayment* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was canceled;

(B) The loan guarantee was transferred to another agency;

(C) The borrower has not yet reached the repayment period;

(D) Payment in full has been made by the borrower;

(E) The borrower was in deferment status at the time repayment was scheduled to begin and remains in deferment status;

(F) Reinsurance coverage has been lost and cannot be regained; and

(G) The agency paid claims, excluding the amount of those claims—

(1) Paid under § 682.412(e);

(2) Paid under a policy established by the agency that is consistent with § 682.509(a)(1); or

(3) Paid at the direction of the Secretary.

(c) *Submission of reinsurance rate base data.* The guaranty agency shall submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30 containing complete and accurate data in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year. The Secretary does not pay a reinsurance claim to the guaranty agency after the date the quarterly report is due until the guaranty agency submits a complete and accurate report.

(d) *Reinsurance fee.* (1) Except for loans made under § 682.209(e), (f) and (h), a guaranty agency shall pay to the Secretary during each fiscal year in quarterly installments a reinsurance fee equal to—

(i) 0.25 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year; or

(ii) 0.5 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year if the agency's reinsurance claims paid reach the amount described in paragraph (b)(1) of this section at any time during that fiscal year.

(2) The agency that is the original guarantor of a loan shall pay the reinsurance fee to the Secretary even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(3) The guaranty agency shall pay the reinsurance fee required by paragraph (d)(1) of this section due the Secretary for each calendar quarter ending March 31, June 30, September 30, and December 31, within 90 days after the end of the applicable quarter or within 30 days after receiving written notice from the Secretary that the fees are due, whichever is earlier.

(e) *Initiation or extension of agreements.* In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guaranty agency and the lenders to which it provides guarantees to collect outstanding loans as required by § 682.410(b) (6) or (7), and § 682.411;

(2) Efforts by the guaranty agency to make FFEL loans available to all eligible borrowers; and

(3) Other relevant aspects of the guaranty agency's program operations.

(f) *Application of borrower payments.* A payment made to a guaranty agency by a borrower on a defaulted loan must be applied first to the collection costs incurred to collect that amount and then to other incidental charges, such as late charges, then to accrued interest and then to principal.

(g) *Federal share of borrower payments.* (1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For purposes of this section, *the Secretary's equitable share* means that portion of borrower payments that remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage that was in effect when the reinsurance payment was made by the Secretary; and

(ii) 30 percent of borrower payments.

(3) Unless the Secretary approves otherwise, the guaranty agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 45 days of its receipt of the payments.

(h) *Nondiscrimination.* (1) A guaranty agency may not engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular participating school within any State served by the guaranty agency, length of the borrower's educational program, or the borrower's academic year in school.

(2) For purposes of this section a guaranty agency is deemed to be serving a State if it guarantees a loan that is—

(i) Made by a lender located in a State not served by the agency;

(ii) Made to a borrower who is a resident of a State not served by the agency; and

(iii) Made for attendance at a school located in the State.

(i) *Other terms.* The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

(1) Promote the purposes of the FFEL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

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§ 682.405 Loan rehabilitation agreement.

(a) *General.* (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers with an enforceable promissory note for the purpose of rehabilitating defaulted loans so that the loan may be purchased, if practicable, by an eligible